

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**JL, through her next friend,
Bruce Thompson, Esq., et al.,**

Plaintiffs,
v. **No. 12cv1145 MV/LAM**

**NEW MEXICO DEPARTMENT
OF HEALTH, et al.,**

Defendants.

AGREED ORDER RE-APPOINTING GUARDIANS AD LITEM

THIS MATTER is before the Court on Plaintiffs' *Agreed Motion for an Order Re-Appointing Guardians Ad Litem for Plaintiffs JL, EH, the Estate of RH and KC* (Doc. 343), filed May 18, 2015. Plaintiffs ask the Court to re-appoint these Guardians *ad Litem* to assist the Court in evaluating a proposed partial settlement of the claims brought against the ENMRSRH Defendants and Defendant The Robert B. Spencer Foundation in this pending litigation benefiting Plaintiffs JL, EH, RH and KC. Having considered the motion, the record of this case, and relevant law, the Court hereby **FINDS**:

1. Guardians *ad Litem* ("GaLs") should be appointed by this Court in connection with the Court's consideration of matters relating to settlement of JL, EH, RH and KC's claims against the ENMRSRH Defendants and Defendant The Robert B. Spencer Foundation in this matter.
2. Each Guardian *ad Litem* shall exercise his/her independent and professional judgment in the performance of the following duties:
 - a. The Guardians *ad Litem* should be appointed to investigate on behalf of the Court into the fairness and reasonableness of the proposed settlement of the claims brought against

the ENMRS defense Defendants and Defendant The Robert B. Spencer Foundation and its effect on JL, EH, the Estate of RH, and KC.

b. to report to the Court, in writing and orally at a hearing now set for May 22, 2015 at 12:30 p.m. on (i) the outcome of his/her investigation and review, (ii) the fairness and reasonableness of the proposed settlement as it relates to Plaintiffs, and (iii) whether the proposed settlement is in the best interests of Plaintiffs.

3. The Honorable Martha Vázquez appointed Bruce Thompson, Esq., as Guardian *ad Litem* for JL; Feliz Rael, Esq., as Guardian *ad Litem* for EH; Barbara Creel, Esq. as Guardian *ad Litem* for RH; and Diane Garrity, Esq., as Guardian *ad Litem* for KC in case No. 2:12-cv-01145-MV-LAM, on April 25, 2013 pursuant to Rule 17 of the Rules of Civil Procedure, for the purposes of prosecuting, controlling and directing the instant litigation. *See [Doc. 82].*

4. Pursuant to Judge Vázquez' order, Bruce Thompson, Esq., Feliz Rael, Esq., Barbara Creel, Esq., and Diane Garrity, Esq. have participated in efforts to recover damages for JL, EH, RH and KC. As a result of the GaLs' actions and initiative, a proposed settlement of the claims brought against the ENMRS defense Defendants and Defendant The Robert B. Spencer Foundation is pending review and approval from this Court.

5. It is appropriate that the GaL with the most information about the claims and defenses in this case should be relied upon by the Court to analyze the terms and conditions of the partial proposed settlement in the context of the entire case history.

6. As the Court-appointed Guardians *ad Litem* advising and informing the Court about the fairness and reasonableness of the proposed settlement, GaLs should be entitled to

engage in all actions and proceedings necessary to enable her/his performance of services on behalf of the Court.

7. The Guardians *ad Litem* shall have access to all medical records regarding including, but not limited to, all counseling and dental records. The Guardians *ad Litem* shall also have access to all of Plaintiffs' medical bills.

8. At any fairness hearing in this case, the Guardians *ad Litem* should report to the Court on the nature and scope of her/his investigation, her/his conclusions and her/his recommendations regarding both the fairness and reasonableness of the proposed settlement and the manner in which the settlement monies should be held or used on behalf of Plaintiffs.

9. Upon the entry of an order approving the proposed settlement, the re-appointing of the Guardians *ad Litem* regarding the fairness and reasonableness of the proposed settlement will automatically cease and he/she shall have no further or continuing duties to the Court or the parties pursuant to this order of appointment.

10. The appointment of Bruce Thompson, Esq., Feliz Rael, Esq., Barbara Creel, Esq., and Diane Garrity, Esq. as Guardians *ad Litem* in connection with the Court's consideration of a proposed settlement of the claims brought against the ENMRS defense Defendants and Defendant The Robert B. Spencer Foundation does not contemplate representation of Plaintiffs as advocates, but only as functionaries of the Court. The responsibilities and duties of the Guardians *ad Litem* are to the Court in fulfilling its obligation to Plaintiffs.

11. There are strong public policy reasons to grant immunity to the Guardians *ad Litem* for their work in this case with respect to settlement, since they are acting as an "arm of the Court" and performing an essential role in this Court's administration of justice, as the Judge's agent.

12. All immunities and privileges available to the Guardians *ad Litem*, as articulated by the New Mexico Supreme Court in *Collins v. Tabet*, 111 N.M. 391, 806 P.2d 40 (1991), should be extended to the Guardians *ad Litem* in this matter.

13. The GaLs are qualified to perform as Guardians *ad Litem* in this matter.

14. Plaintiff RH has died and the probate of his estate is underway in New Mexico State District Court in Cause No. D-905-PB-2015-00024.

15. On May 15, 2015, the Court substituted the Estate of RH for Plaintiff RH as a Plaintiff in this action, due to RH's death. *See [Doc. 342].*

IT IS THEREFORE ORDERED that Bruce Thompson, Esq., is appointed Guardian *ad Litem* for JL; Feliz Rael, Esq., is appointed Guardian *ad Litem* for EH; Barbara Creel, Esq. is appointed Guardian *ad Litem* for RH's Estate; and Diane Garrity, Esq. is appointed Guardian *ad Litem* for KC, as "arms of the Court," appointed in connection with this Court's consideration of a settlement involving Plaintiffs, consistent with all findings above. These appointments are intended to complement and add to the existing duties of the Guardians *ad Litem* with respect to Plaintiffs. The GaLs shall be absolutely immune from any liability for her/his actions taken pursuant to this appointment, insofar as her/his conduct in the case is a result of her/his investigation on behalf of this Court into the fairness and reasonableness of the settlement in its effect on Plaintiffs. The duties and obligations of the Guardians *ad Litem* in this Court are owed to the Court in fulfilling its obligations to Plaintiffs.

This appointment of Bruce Thompson, Esq., as Guardian *ad Litem* for JL; Feliz Rael, Esq., as Guardian *ad Litem* for EH; Barbara Creel, Esq., as Guardian *ad Litem* for the Estate of RH; and Diane Garrity, Esq., as Guardian *ad Litem* for KC is intended to convey upon her/him all of the

immunities and protections allowed or provided under *Collins v. Tabet*, 111 N.M. 391, 806 P.2d 40 (1991).

IT IS THEREFORE ORDERED that Plaintiffs' *Agreed Motion for an Order Re-Appointing Guardians Ad Litem for Plaintiffs JL, EH the Estates of RH and KC* (Doc. 343) is **GRANTED** as set forth above.

IT IS SO ORDERED.



LOURDES A. MARTÍNEZ
UNITED STATES MAGISTRATE JUDGE

SUBMITTED BY: (*Prior to modification by the Court*)

/s/ Peter Cubra
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APPROVED BY:
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